

RESPONSE TO RESTRICTION REQUIREMENT
DATED SEPTEMBER 14, 2006

Appln. No. 10/694,276

- 2 -

October 13, 2006

REMARKS

This is in response to the restriction requirement dated September 14, 2006. Reconsideration is respectfully requested.

Status of Claims

Claims 1-33 are pending and subject to a restriction requirement. As defined by the Examiner, Claims 1-16, 32 and 33 are included in Group I, drawn to an electric battery with electrolyte refilling means and a method of refilling the electrolyte. Claims 17-31 are included in Group II, drawn to an electric battery with electrolyte filling means including an air pump with a pump sensor alarm.

Election

Applicant hereby provisionally elects, with traverse, Group I, Claims 1-16, 32 and 33 for examination.

The Traversal

Applicant notes that for restriction to be proper, "there must be a serious burden on the examiner if restriction is required" (see MPEP, section 803). The MPEP further suggests that a serious burden may be prima facie shown if the examiner shows, by appropriate explanation either separate classification, separate status in the art or a different field of search.

The Examiner has demonstrated none of these factors in support of the restriction. Instead, the Examiner relies upon MPEP Section 806.05(d), which states: "two or more claimed subcombinations, disclosed as usable together in a single combination, and which can be shown to be separately usable, are usually restrictable when the subcombinations do not overlap in scope and are not obvious variants". However, this

RESPONSE TO RESTRICTION REQUIREMENT
DATED SEPTEMBER 14, 2006

Appln. No. 10/694,276

- 3 -

October 13, 2006

section also states that "restriction is only proper when there would be a serious burden if restriction were not required, as evidenced by separate classification, status, or field of search".

Thus, for restriction to be proper, it is not enough that two or more subcombinations are claimed, but there must also be a serious burden on the Examiner substantiated by evidence that meets the requirements of a prima facie showing. However, the Examiner has admitted on page 2 of the Action that both groups of claims in the application are classified in the same class and subclass, namely, class 429, subclass 91. In the face of this admission, how can the restriction be deemed proper, when a prima facie showing requires that the subcombinations be classified in separate classifications?

Applicant contends that the restriction is not proper by all relevant authorities because the Examiner has failed to meet the express criteria necessary to establish that there will be a serious burden. Applicant requests, therefore, that the restriction be withdrawn and all pending Claims 1-33 be examined in the instant application.

Respectfully submitted,

SYNNESTVEDT & LECHNER LLP

By: 

John A. Chionchio
Reg. No. 40,954

1101 Market Street, Suite 2600
Philadelphia, PA 19107-2950
Telephone: (215) 923-4466
Facsimile: (215) 923-2189

JAC/dml

S:\P\PHILADELPHIA SCIENTIFIC\Patents\P26424-A USA\PTO\26424A RESPONSE.RESTRICTION.doc